

106 FERC ¶ 61,004  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suede G. Kelly.

Geysers Power Company, LLC

Docket Nos. ER04-171-000

ORDER ACCEPTING FOR FILING CERTAIN PROPOSED REVISIONS TO  
RELIABILITY MUST-RUN AGREEMENTS AND ACCEPTING FOR FILING,  
SUSPENDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE  
PROCEDURES FOR CERTAIN PROPOSED REVISIONS TO RELIABILITY  
MUST-RUN AGREEMENTS

(Issued January 5, 2004)

1. In this order, the Commission accepts for filing the proposed revisions by Geysers Power Company, LLC (Geysers Power) to its Reliability Must-Run Agreement (RMR Agreement)<sup>1</sup> with the California Independent System Operator Corporation (CAISO) for Geysers Power's Units 13 and 16 (Geysers Units 13 and 16 RMR Agreement) to be effective January 1, 2004, as requested. The Commission also accepts for filing the proposed revisions to Geysers Power's RMR Agreement for the Geysers Power's Main Units<sup>2</sup> (Geysers Main Units RMR Agreement), suspends them for a nominal period, to become effective January 1, 2004, subject to refund, and establishes hearing and settlement judge procedures.

**I. Filing**

2. Geysers Power submits the RMR Agreement between Geysers Power and CAISO for Geysers Power's Main Units and the RMR Agreement between Geysers

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<sup>1</sup> Geysers Power's RMR Agreements follow a generic, standard form that was agreed to as part of a settlement approved by the Commission in a letter order issued on May 28, 1999. See California System Operator Corporation, et al., 87 FERC ¶ 61,250 (1999) (RMR Settlement Agreement).

<sup>2</sup> Geysers Power's Main Units consist of units 5, 6, 7, 8, 11, 12, 14, and 17.

Power and CAISO for Geysers Power's Units 13 and 16. Geysers Power requests waiver of the Commission's prior notice requirement to permit an effective date of January 1, 2004, which it indicates is required under the RMR Agreements and is consistent with a prior settlement.

3. Geysers Power explains that these agreements govern the rates, terms and conditions for the provision of RMR services to CAISO and that the filing is made in response to CAISO's designation of certain of Geysers Power's units as RMR units for calendar year 2004. Geysers Power further explains that the proposed revisions update the contract service limits of Schedule A, the values in Tables B-1 through B-6 of Schedule B, and the notice provisions in Schedule J. In addition, Geysers Power states that the filing includes new Capital Item Charges for additional Capital Items that have been approved by CAISO and incorporates the Annual Fixed Revenue Requirements arising out of a prior settlement.

## **II. Notice of Filing and Responsive Pleadings**

4. Notice of Geysers Power's filing was published in the Federal Register, 68 Fed. Reg. 66,089 (2003), with interventions and protests due on or before November 28, 2003. The Public Utilities Commission of the State of California (California Commission) filed a notice of intervention. Pacific Gas and Electric Company (PG&E) and the State of California Electricity Oversight Board (EOB) filed timely motions to intervene. CAISO filed a timely motion to intervene and provisional protest to Geysers Power's filing.

## **III. CAISO's Provisional Protest**

5. CAISO explains that it administers invoicing for Geysers Power's RMR services and is concerned that Geysers Power has failed to include in its filing information to be used for dispatching and invoicing where the physical meter grouping is different from the RMR Unit designations. Specifically, CAISO states that the Geysers Power Units 5 and 6 and the Geysers Power Units 7 and 8 are jointly metered. CAISO explains that the rates and values for Geysers Power Units 5, 6, 7, and 8 in Tables B-1 through B-6 set forth in Geysers Power's rate sheets are provided on a unit-by-unit basis and are not consistent with the level of metering for the units. CAISO also states that this situation has existed in the past and that CAISO and Geysers Power have had agreements for "translating" the rates approved by the Commission into the rates used for invoicing. However, CAISO asserts that the rates approved by the Commission should be the same as those used for invoicing without the need for "translation" agreements. It further maintains that the fact that the rates as presented to the Commission do not reflect the physical reality and must be changed for invoicing purposes makes it difficult for the CAISO to confirm that the

rates are just and reasonable and to verify the rates used for invoicing against the rates approved by the Commission.

6. Accordingly, the CAISO requests that the Commission find that Geysers Power's proposed revised schedules have not been shown to be just and reasonable and suspend the proposed revisions to be effective January 1, 2004, subject to refund. In addition, CAISO requests that the Commission defer further action in this proceeding for 45 days from the date of its protest to allow time for the parties to resolve this issue informally.

#### **IV. Discussion**

##### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### **B. Commission Determination**

8. Our preliminary analysis of Geysers Power's proposed revisions pertaining to the Geysers Units 13 and 16 RMR Agreement, which were not protested, and which are rate decreases, indicates that they appear to be just and reasonable, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept for filing the proposed revisions to the Geysers Units 13 and 16 RMR Agreement, effective January 1, 2004, as requested.

9. Our preliminary analysis indicates that Geysers Power's proposed revisions to its Geysers Main Units RMR Agreement, in light of CAISO's concerns, have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In this regard, CAISO has raised issues of material fact pertaining to the Geysers Main Units RMR Agreement that cannot be resolved on the record before us, and we are sympathetic to CAISO's concerns as to the need to harmonize the rates with the billing. These concerns are more appropriately addressed in the hearing ordered below. Accordingly, we will accept the proposed revisions to the Geysers Main Units RMR Agreement for filing, suspend them for a nominal period, to become effective January 1, 2004, subject to refund, and set the proposed revisions for hearing.

10. In order to provide the parties the opportunity to resolve the matters at issue among themselves, we will hold the hearing in abeyance and direct settlement judge

procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>3</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>4</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Geysers Power's proposed revisions to the Geysers Units 13 and 16 RMR Agreement are hereby accepted for filing, effective January 1, 2004, as discussed in the body of this order.

(B) Geysers Power's proposed revisions to the Geysers Main Units RMR Agreement are hereby accepted for filing, suspended for a nominal period, to become effective January 1, 2004, subject to refund, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions to the Geysers Main Units RMR Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Administrative Law Judge designates the settlement judge.

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<sup>3</sup> See 18 C.F.R. § 385.603 (2003).

<sup>4</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within 5 days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (<[www.ferc.gov](http://www.ferc.gov)> -- click on Office of Administrative Law Judges).

If the parties decide to request a specific judge, they must make their request to the Chief Administrative Law Judge by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Administrative Law Judge on the status of the settlement discussions. Based on this report, the Chief Administrative Law Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign the case to a presiding administrative law judge for a trial-type evidentiary hearing. If settlement discussions continue, the settlement judge shall file a report at least every thirty (30) days thereafter, informing the Commission and the Chief Administrative Law Judge of their progress toward settlement.

(F) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date on which the Chief Administrative Law Judge designates the presiding administrative law judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.